

Application No. 10/090,506
Amendment dated July 12, 2005
Reply to Office Action of April 12, 2005

REMARKS

Applicant amended claims 125, 145-153, 155-157, and 159-166, and added new claims 167 and 168 to further define Applicant's invention. New claims 167 and 168 are supported at least by Figs. 38, 39, and 42.

In the Office Action, the Examiner indicated that there were no claims numbered 144 to 149 and requested that claims 150-172 be renumbered. In accordance with the Examiner's request, Applicant renumbered previously presented claims 150-172 as claims 144-166, respectively. Applicant amended the dependencies of claims 145-153, 155-157, and 159-166 in accordance with the renumbered claim numbers.

The Examiner allowed previously numbered claims 160-163 and 165-172 (newly renumbered claims 154-157 and 159-166).

The Examiner rejected claims 125, 126, and 128-143 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,486,180 to Dietz et al. ("Dietz"). Independent claim 125, as now amended, recites the first and second tracks of the milling block "being configured to guide movement of said bone cutting device axially along the central longitudinal axis of said bone cutting device and in a direction transverse to the central longitudinal axis of said bone cutting device to remove bone." Dietz teaches guiding a burr 2 along track 18 to cut bone. Burr 2 is not capable of axial movement along its central longitudinal axis when engaged with template 17 because retainer 31 and nose surface 30 trap guide nipple 6 therebetween to allow only movement transverse to the longitudinal axis of the milling device. (See, e.g., Dietz, col. 3, lines 21-27; Figs. 5 and 7). Accordingly, Applicant submits that the Examiner's rejection of claims 125, 126, and 128-143 under 35 U.S.C. § 102(e) as being anticipated by Dietz has been overcome.

The Examiner rejected claims 125, 126, 128-131, 134-137, and 150-159 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,571,109 to Bertagnoli ("Bertagnoli"). Independent claim 125, as now amended, recites a milling block having first and second tracks, "said first track overlapping a portion of the first one of the

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adjacent vertebral bodies when said milling block is placed across the height of the disc space," and "said second track overlapping a portion of the second one of the adjacent vertebral bodies when said milling block is placed across the height of the disc space." Bertagnoli teaches a guide instrument 10 having rails 11, 12 with guide grooves 14, 15, respectively. (Bertagnoli, col. 7, lines 55-65; Fig. 1a). According to Bertagnoli, "guide rails 11 and 12 in accordance with Fig. 1 can be made with such a height h that it is able to be introduced into the gap between two adjacent vertebra 17 and 18." (Bertagnoli, col. 7, line 67 to col. 8, line 3; Fig. 6). Thus, each of guide grooves 14, 15 do not overlap a portion of an adjacent vertebral body as recited in Applicant's claimed invention. Moreover, Bertagnoli does not teach or suggest first and second tracks "being configured to guide movement of said bone cutting device...in a direction transverse to the central longitudinal axis of said bone cutting device to remove bone." Accordingly, Applicant submits that the Examiner's rejection of claims 125, 126, 128-131, 134-137, and 150-159 under 35 U.S.C. § 102(e) as being anticipated by Bertagnoli has been overcome.

Applicant submits that independent claim 125 and newly renumbered independent claim 154 (previously presented independent claim 160) are patentable and that dependent claims 126, 128-143, and newly renumbered dependent claims 144-153, 155-157, and 159-166 (previously presented claims 150-159, 161-163, and 165-172), dependent from one of independent claim 125 or newly renumbered claim 154, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including

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any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1068.

Respectfully submitted,

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